IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 291 OF 2006.

Ashok Laxman Gulhane,
Aged 49 years, Occ.: Business
and Agricjlturists, R/o.Wadgaon
Road, Yavatmal, Taluka & Dist.
Yavatmal 445 001. ... Petitioner.

Versus.

1. Tata Finance Ltd.,
   a company incroporated under
   the provisions of Companies
   Act 1956 having its registered
   office at Pezzola Complex,
   V.N.Purav Marg, Chembur,
   Mumbai 400 071, and having its
   another office at G.G.House,
   4th floor, Damodhardas Sukhadwala
   Marg, Fort, Mumbai 400 001.

2. B.K.Barve,
   Advocate & Arbitrator,
   Unvierse Business Centre,
   109, Esplanade Mansion, 1st floor,
   144, M.G.Road, Kalaghoda, Near
   City Cviil Court, Mumbai 400 023. ... Respondents.

Shri A.S.Rao for the Petitioner.

Shri Y.R.Shah for the Respondent No.1.

CORAM : ABHAY S.OKA, J.

DATED : 1st October, 2007.

ORAL JUDGMENT.:

1. I have heard the submissions of the learned Counsel appearing for the parties. According to the case of the 1st Respondent-Tata Finance Ltd., a vehicle was given by the 1st Respondent to the Petitioner on hire purchase under hire purchase agreement dated 26th

March 2001. According to the terms of the said hire purchase agreement, the Petitioner was liable to pay to the 1st Respondent a sum of Rs.1,13,558/- by way of initial hire charge and thereafter the sums mentioned in the second schedule to the said agreement being the monthly hire charges. The total amount agreed to be paid by the Petitioner was Rs.8,63,734/-. According to the case of the 1st Respondent, the Petitioner committed several defaults under the hire purchase agreement. The 1st Respondent repeatedly demanded payment of arrears from the Petitioner. As the Petitioner failed to pay the amount as per the terms and conditions of the agreement, the 1st Respondent took over possession of the said vehicle on 21st May 2002. Thereafter on 22nd October 2002, the said vehicle was sold and a sum of Rs.4,30,000/- was realised by the 1st Respondent.

2. It appears that the Petitioner filed a complaint before the District Consumer Redressal Forum at Yevatmal on 2nd April 2004.

3. The 1st Respondent invoked arbitration clause and appointed an Arbitrator. According to the Statement of Claim filed by the 1st Respondent as on 21st October 2003, a sum of Rs.5,62,010/- was payable by the Petitioner and the guarantor comprising of Rs.5,00,063/- being the arrears of hire charges and a sum of

Rs.54,187/- being compensation accrued on delayed/unpaid hire charges. Certain amount was claimed by way of repossession expenses as well as the expenses incurred on the vehicle after repossession. In the statement of claim, an allowance was made to the sum of Rs.4,30,000/- being the price of the vehicle. Therefore, the claim was for the balance amount of Rs.1,32,010/- along with compensation accrued on the balance dues being 85,673/- from 20th October 2002 to 9th August 2004. A further compensation on the sum of Rs.1,32,010/- was claimed at the rate of 36% per annum from 10th August 2004.

4. As per the recitals in the Award it appears that the Petitioner did not appear before the learned Arbitrator and an award was made on 21st September 2004 accepting the claim of the 1st Respondent. However, the learned Arbitrator awarded further compensation on the balance amount of Rs.1,32,010/- at the rate of 18% per annum with effect from 10th August 2004 till the date of payment of the amount or realisation. Costs of arbitration payable by the Petitioner and the 1st Respondent were quantified at Rs.6265/-. The 1st Respondent was held entitled to recover costs of arbitration and arbitration fees from the Petitioner.

5. The learned Counsel appearing for the Petitioner submitted that the learned Arbitrator could not have

proceeded with the arbitration proceedings in view of the pendency of the complaint filed by the Petitioner before the Consumer Dispute Redressal Forum of Yavatmal. He submitted that in view of the pendency of the said proceedings, the Petitioner did not appear before the Arbitrator. Secondly he pointed out that the compensation has been granted by the learned Arbitrator at the rate of 36% per annum on the sum of Rs.1,32,010/- for the period commencing from 22nd October 2002 till 9th August 2004. He submitted that the said direction is illegal and without jurisdiction. The learned Counsel appearing for the 1st Respondent supported the impugned Award.

6. I have considered the submissions of the learned Counsel appearing for the parties. A perusal of the Award shows that on 12th August 2004 the Petitioner did not remain present before the learned Arbitrator. The learned Arbitrator adjourned the reference till 3rd September 2004 and issued fresh notice on 12th August 2004 informing the Petitioner of the next date. Again on 3rd September 2004, the Petitioner did not appear. The learned Arbitrator adjourned the reference till 21st September 2004 and issued a notice dated 3rd September 2004. Thus the Award shows that atleast three notices were issued by the learned Arbitrator. There is no challenge to the fact that notices were issued by the

learned Arbitrator. No application was made by the Petitioner before the learned Arbitrator for postponing the hearing of the reference on the ground of pendency of the dispute before the Consumer Forum.

7. A perusal of the Award shows that the 1st Respondent led evidence by producing the original documents. The learned Arbitrator has considered the terms of the contract between the parties. One of the term being condition No.2(c) for payment on the overdue hire charges at the rate of 36% per annum. It is pertinent to note that the compensation at the rate of 36% has been granted only till 9th August 2004 and from 10th August 2004 till realisation of the amount, interest at the rate of 18% per annum has been granted by the learned Arbitrator.

8. The Petitioner has not made out any ground under section 34 of the said Act for setting aside the Award. There is no merit in the Arbitration Petition and the same is accordingly dismissed.

Judge.